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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/556,852	04/21/2000	Charles A. Liedert	013129/00025	6369

7590 01/05/2004

Locke Liddell & Sapp LLP  
IP Docket Clerk  
600 Travis Street  
3400 Chase Tower  
Houston, TX 77002

EXAMINER
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MEDLEY, MARGARET B

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/556,852	LIEDER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Margaret B. Medley	1714	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

This action is in response to the response dated September 26, 2003. have been entered of record.

The pending claims of record are claims 1-29.

Claims 1, 4-9, 13-18 and 21-29 remain rejected under 35 U.S.C. 102(b) as being clearly anticipated by Jarvis (Jarvis) 5,679,117, note column 5, lines 3-29 and 65-67, column 6, lines 3-4 and 20-28.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-22 for reasons made of record in Paper No. 6 dated April 11, 2001 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Malfer et al (Malfer) 6,048,373 combined with Jessup et al (Jessup) 5,288,393.

Claims 1-29 for reasons made of record in Paper No. 6 dated April 11, 2001 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Niebylski 4,317,657 in view of Cunningham et al (Cunningham) 5,551,957 and 5,679,116.

Applicant's arguments filed September 26, 2003, October 11, 2002 and April 4, 2003 and the Declarations dated October 11, 2002 and April 4, 2003 have been fully considered but they are not persuasive.

Applicants' arguments with respect to the 102(b) rejection over Jarvis 5,679,117 is not convincing in that patentee clearly teaches that the 20% volume of new product containing 42.76 % of alcohol is added to 80 octane gasoline producing a resulting mixture of 92.8 octane and vapor pressure in the range of 4 to 19 psi column 5, lines 5-28 that anticipates the instant claims. Jarvis further teaches that the final product (pump gasoline) has a vapor pressure in the range from 6 to 8 psi, note column 6, lines 26-28 that anticipates the instant claims and rebuts applicants' arguments and the Rule 132 Declaration of Liedner.

The 103 rejection based on claims 1-29 over Niebylski 4,317,657 and Cunningham 5,551,957 and 5,679,166 are maintained because the combined teachings of the references teach the instant claimed gasoline-oxygenate blend having the same or overlapping range of RVP. The claims as drafted do not distinguish over the teachings of Niebylski and Cunningham I and II. A review and study of the AP

Publication 4261 clearly teaches that all alcohol are not the same, note that it is methanol that increases higher RVP wherein ethanol does not increase the RVP as high. The claims as drafted are not specific to ethanol and are not specific to proportion of ethanol.

The 103 rejection over claims 1-22 based on Malfer et al 6,048,373 combined with Jessup et al 5,288,393 are maintained because the combined teachings of the references teach the instant claimed gasoline-oxygenate blend having the same or overlapping range of RVP. The claims as drafted do not distinguish over the teachings of Malfer and Jessup. A review and study of the AP Publication 4261 clearly teaches that all alcohol are not the same, note that it is methanol that increases higher RVP wherein ethanol does not increase the RVP. The claims as drafted are not specific to ethanol and are not specific to proportion of ethanol.

It appears that applicants' are arguing specific that are set forth in the examples that are not set forth in the claims. The claims are drafted so broadly that they encompass the teachings of the prior art made of record.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

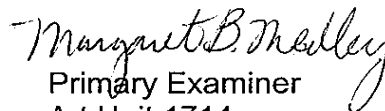
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret B. Medley whose telephone number is (703) 308-2518.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
Primary Examiner  
Art Unit 1714  
Margaret B. Medley

M.B. Medley  
December 22, 2003